IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

FAO.No. 143 of 2007()

AGAINST THE ORDER DATED 13/04/2007 IN IA.2529/2007 IN OS.260/2007 of I ADDL.SUB COURT,ERNAKULAM

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: APPELLANT/PLAINTIFF

K.R.ASHIR, S/O.MUHAMMED RASHEED,
AGED 32, BUSINESS, KADAMBOTTUVEETIL,
YERIAD KARAYIL, YERIAD VILLAGE, KODUNGALLUR TALUK.

BY ADV. SRI.V.GIRI

RESPONDENTS: DEFENDANT/RESPONDENT

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1. D.N.SINGHAL, S/O.C.L.SINGHAL,
DOOR NO.44/870, L.F.C. ROAD, KALOOR DESOM,
ELAMKULAM- 682 017.

2. VIKAS SINGHAL, S/O.DEVAKI MENON,
SWOPNA BUILDING, KOVILVATTOM DESOM,
KANAYANNUR TALUK.

3. VINAY SINGHAL, S/O.D.N.SINGHAL,
KUMARANASAN NAGAR, POONITHURA VILLAGE,
KANAYANNUR TALUK.

4. SAVITHA SINGHAL, W/O.D.N.SINGHAL,
KUMARANASAN NAGAR, POONITHURA VILLAGE,
KANAYANNUR TALUK.

5. ARAVIND SINGHAL, S/O.D.N.SINGHAL,
DOOR NO.44/870,L.F.C. ROAD, KALOOR DESOM,
ELAMKULAM-682 017.

6. PRAVEEN SINGHAL, S/O.S.K.SINGHAL,
DOOR NO.44/870, L.F.C.ROAD, KALOOR DESOM,
ELAMKULAM-682 017.

7. MANJU.S., W/O.VINAY SINGHAL,

DOOR NO.44/870, L.F.C. ROAD, KALOOR, DESOM,
ELAMKULAM- 682 017.

8. EKTA GOYAL, W/O.SUNIL GOYAL,
DOOR NO.44/870, L.F.C. ROAD, KALOOR DESOM,
ELAMKULAM -682 017.

BY ADV. SRI.MATHEW KURIAKOSE
SRI.MATHEW KURIAKOSE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 05/06/2007, ALONG WITH WPC NO. 13874 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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F.A.O.NO.143 of 2007

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Dated this the 5th day of June, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

Aggrieved by that part of the order passed by the court below, whereby the plaintiff was directed to deposit an amount of Rupees One Crore within a period of two days, this appeal is filed by the plaintiff. The suit, O.S. No.260/2007 is filed seeking specific performance of the agreement executed between the parties. I.A. No.2529/2007 was filed by the appellant seeking an order of temporary injunction restraining the defendants from alienating or encumbering the plaint schedule property or inducting any strangers pending disposal of the suit. The impugned order reads as follows:

> " Heard.
>
> Interim injunction is granted against defendants/respondents from alienating plaint schedule property till the measurement of property at the instance of plaintiff within 7 days and to deposit Rs.1 crore after 2 more days. The days specified are clear working days upto 25.4.2007. Plaintiff is directed to deposit one crore rupees, within two days as specified above. If the conditions are not complied with interim injunction granted will be automatically

vacated by 26.4.2007."

Aggrieved by the direction to deposit the amount specified as above, as a condition for granting temporary injunction, this appeal is filed by the plaintiff.

2. We heard counsel for the parties.

3. It is common case that the transaction fell through and the parties allege various circumstances for their failure to go through the same. The issue is yet to be decided by the court below. At the same time, counsel for the respondents argued for the position that there was failure on the part of the plaintiff to offer the amount for the purpose of executing the sale deed.

4. Since the suit is one for specific performance of agreement for sale of the property scheduled in the plaint, the substratum of the suit has to be preserved pending the disposal of the case. It is obviously because of the above circumstance that the plaintiff sought for a temporary injunction restraining alienation or encumbering the plaint schedule property or inducting any strangers during the pendency of the suit. Therefore, the court below was not right in imposing a further condition to deposit an amount of Rupees One Crore for granting an order of temporary injunction. At any rate, the direction to deposit any part of the sale consideration can be ordered only at the time of passing the decree.

5. The liability on the part of the plaintiff to deposit amount towards the balance sale consideration arises only after evidence is taken and a decree is passed as sought for in the suit. Therefore, the condition now imposed by the court below while granting the order of temporary injunction suffers from serious infirmity. The same is not warranted at this stage. Therefore, we lift the said condition. Since the issue involves relief of specific performance of an agreement, we direct the court below to dispose of the suit within a period of four months from the date of receipt of a copy of this judgment.

The appeal is allowed to the above extent. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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